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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte IWAO HATANAKA

Appeal 2007-2515
Application 09/781,616
Technology Center 2100

Decided: January 15, 2008

Before ALLEN R. MACDONALD, JEAN R. HOMERE, and JAY P. LUCAS, *Administrative Patent Judges*.

MACDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals a Final Rejection of claims 1-11 under 35 U.S.C. § 134. We have jurisdiction under 35 U.S.C. § 6(b).

According to Appellant, Appellant invented a system, method, and computer program product that releases server resources held by a client when the resources are no longer being used by that client. (Spec. 6:15-17, 12:7-18, and Fig. 2B.) Determination of whether resources are no longer

required involves determining whether unavailable resources (a) have been held for too long a period of time and (b) have been idle for too long a time. (*Id.*). In the words of Appellant:

> The present invention involves setting up a resource manager for each session and logging the use of resources associated with that session. Then, when the session is no longer active -- for whatever reason, including normal disconnection or a lost connection, the resource manager consults the listing of resources associated with that session and releases the resources for use, *allowing use with other sessions*.

(Emphasis added) (Spec. 7:1-5.)

Claim 1 is exemplary and is reproduced below:

> 1. A system for managing the use of resources in a system where a remote client uses resources at a server for a limited duration, the system comprising:
>
> a stored listing of at least one resource being used at the server and the remote client using that resource;
>
> a system which identifies whether the remote client is no longer using resources at the server, including determining a combination of whether the resources have been held by the remote client for a period longer than a first preset threshold and whether the resources have been held by the remote client without use of the resources for a period longer than a second preset threshold; and
>
> in response to the system identifying that the remote client is no longer using resources at the server, a mechanism which removes the resources which had been used by the remote client when the remote client was connected to the server, whereby the resources being used

by the remote client are capable of being used by other clients after the remote client has disconnected from the server.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Sayan et al.	US 6,477,569 B1	Nov. 5, 2002 (filed Nov. 20, 1998)

Claims 1-11 are rejected under 35 U.S.C. § 102(e) as being anticipated by Sayan.

We affirm.

ISSUE

The Examiner finds that Sayan discloses a determining step which comprises determining a combination of a first threshold determination, which comprises "whether the resources have been held by the remote client for a period longer than a first preset threshold," and a second threshold determination, which comprises "whether the resources have been held by the remote client without use of the resources for a period longer than a second preset threshold" (Ans. 4-5 and 6-7.)

Appellant alleges that the Examiner erred in rejecting claims 1-11 because Sayan does not disclose the determining step. (App. Br. 5-6 and Reply Br. 2.) Appellant does not dispute that a pool agent constitutes held resources when the pool agent processes a transaction. (App. Br. 6 and Reply Br. 2.) Rather, Appellant alleges that "[t]he period for processing the

first or the only transaction is different than a period of holding a resource." (Reply Br. 2.) Appellant alleges Sayan's CPU limit restricts the amount of time a pool agent processes a *single* transaction but does not limit a *total amount of time* a client application *holds* a pool agent because the pool agent can service multiple transactions for a total period longer than the CPU limit. (App. Br. 6 and Reply Br. 2.)

Thus the issue is whether Sayan discloses the determining step. The issue turns on whether Sayan's disclosure of limiting a time period that a pool agent processes a single transaction meets the claimed first threshold determination.

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Sayan

1. Sayan discloses that "[w]hen a client application initiates a communication, the Server receives the communication request and finds an agent with *available resources*" and that "the Server forwards the request to the selected Agent which in turn accepts the connection." (Col. 12, ll. 42-48 (emphasis added).)
2. Sayan discloses that a "[c]lient application sends a request which is received by the Pool Agent. The Pool Agent processes the request,

responds to the request." (Col. 12, ll. 49-51.) Sayan discloses that a pool agent performs transactions requests serially. (Tables 2-5.)

3. Sayan discloses that "[t]he CPU limit defines the maximum number of CPU cycles in *seconds* allowed to process *a transaction*" and "[t]he CPU limit is a parameter of both the pool master and *pool agent*." (Col. 8, ll. 1-9 (emphasis added).) Moreover, Sayan discloses that the CPU limit ensures that the "CPU will not be used more than the above value *while servicing a transaction*." (Col. 8, ll. 7-8 (emphasis added).)
4. Sayan discloses that a Pool Agent is initialized in response to communication initiated by a client application and becomes idle after accepting a request from the client application. (Table 1.) Sayan discloses "[i]f the Pool Agent remains idle for more than the predetermined period of time the Pool Agent times out and the process terminates." (Col. 12, ll. 62-64.)

PRINCIPLES OF LAW

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

During examination of a patent application, a claim is given its broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969). "[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.,* 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted). "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, *i.e.*, as of the effective filing date of the patent application." *Phillips v. AWH Corp.*, 415 F.3d at 1313 (Fed. Cir. 2005) (*en banc*).

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

Claim 1

First Threshold Determination

We begin our analysis by construing "resources have been held" of the first threshold determination.

The customary and ordinary meaning of "held" is "[t]o maintain a grasp or grip on something." *The American Heritage Dictionary of the*

English Language (4th ed. 2000), found at www.bartelby.com. Appellant's Specification states:

> at block 226 the amount of time a resource has been used will be compared with an allowable time for such use (if any has been set) by comparing the present time with the beginning time which was stored in column 308 of Fig. 3A to determine the amount of time the resource *has been in use*. If the time that the resource has been used does not exceed the limit, then the amount of inactive time is compared at block 228.

(Emphasis added) (Spec. 12:7-12.)

Accordingly, we broadly and reasonably construe "resources have been held" as requiring that resources are in use.

We disagree with the Appellant's allegation that "[t]he period for processing the first or the only transaction is different than a period of holding a resource" (Reply Br. 2). The claimed first threshold determination does not require a determination that resources are held *cumulatively* for longer than the preset threshold but instead requires a determination of whether the resources are merely in use for longer than the first preset threshold.

Appellant alleges that a pool agent will not be assigned to a transaction if the transaction is known to take more than the CPU limit and therefore such pool agent is never held and the time for holding such pool agent will never be compared against the CPU limit. (Reply Br. 2.) We find that Sayan's CPU limit safe guards against a pool agent overtaking the CPU

while the pool agent processes the transaction because Sayan discloses that the CPU limit ensures that the "CPU will not be used more than the above value *while servicing a transaction*" (emphasis added) (FF 3). Accordingly, Sayan's CPU limit does not prevent a pool agent from being assigned to process a transaction but prevents a pool agent from processing a transaction for a period longer than the CPU limit (FF 3).

Appellant does not dispute that a pool agent meets the claimed held resources when the pool agent processes a transaction. (App. Br. 6 and Reply Br. 2.) Sayan discloses that the pool agent is available for use by a client until the pool agent processes a transaction request from a client. (FF 1 and 2.) We find that the pool agent meets the claimed held resources when the pool agent processes a transaction request from a client.

Sayan discloses that a CPU limit restricts the amount of time a pool agent processes a transaction. (FF 3.) When a pool agent resource processes a single transaction for a period of time set by the CPU limit, the CPU limit restricts the amount of time that the pool agent processes the transaction and therefore restricts the time that the pool agent is held. Accordingly, we find that Sayan's CPU limit discloses the claimed first threshold determination.

Therefore, Appellant has not shown that the Examiner erred in finding that Sayan discloses the claimed first threshold determination.

Second Threshold Determination

The claimed second threshold determination requires determining whether resources have been held without use for a period longer than a second preset threshold.

We found *supra* that the pool agent is the claimed held resources after the pool agent accepts a transaction request from the client because the pool agent is in use by the client. Sayan discloses that a pool agent becomes idle after accepting a request from the client application (FF 4) and therefore the pool agent becomes idle while being held. In addition, Sayan discloses that if the held pool agent remains idle for more than a predetermined period of time, the pool agent times out and the process terminates. (FF 4.) Accordingly, we find that Sayan's terminating a pool agent that is assigned to a client transaction because the pool agent is idle for more than a predetermined period of time meets the claimed second threshold determination.

Therefore, Appellant has not shown that the Examiner erred in finding that Sayan discloses the claimed second threshold determination.

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 1 as anticipated by Sayan.

Other Claims

Appellant also alleges Sayan does not disclose the determining step of independent claims 5, 9, and 10 but does not present any other arguments

with regard to those claims.[1] (App. Br. 5-6.) Claims 5, 9, and 10 are subject to the same rejection as that which pertains to claim 1. Therefore, as to the rejection of claims 5, 9, and 10, Appellant has not shown Examiner error for the same reasons discussed *supra* with respect to claim 1.

As to dependent claims 2-4, 6-8, and 11, Appellant merely references the arguments made with respect to claim 1. (App. Br. 6.) Therefore, as to the rejection of these claims, the Appellant has not shown Examiner error for the same reasons discussed *supra* with respect to claim 1.

CONCLUSIONS OF LAW

We conclude that:

(1) Appellant has not shown that the Examiner erred in finding claims 1-11 anticipated by Sayan under 35 U.S.C. § 102(e); and

(2) Claims 1-11 are not patentable.

[1] We note that claim 9 does not recite the determining step using the same language of claim 1 (as argued by Appellant). However, apart from the allegations made with regard to the determining step, Appellant has not alleged any Examiner error in finding that claim 9 is anticipated by Sayan. (App. Br. 5-6 and Reply Br. 1-2.) We therefore group claim 9 with claim 1.

DECISION

The Examiner's rejection of claims 1-11 under 35 U.S.C. § 102(e) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

rwk

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